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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 140131088-4913-02]

RIN 0648-BD94

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Effort Limits in Purse Seine Fisheries for 2014

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to revise the 2014 limit on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone (U.S. EEZ) and on the high seas between the latitudes of 20° N. and 20° S. in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). The total limit for 2014 is revised from 2,588 fishing days to 1,828 fishing days. This action is necessary for the United States to implement provisions of a conservation and management measure (CMM) adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission) and to satisfy the obligations of the United States under the Convention, to which it is a Contracting Party.

DATES: This rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of supporting documents prepared for this final rule, including the regulatory impact review (RIR) and the Supplemental Information Report prepared for National Environmental Policy Act (NEPA) purposes, as well as the proposed rule, are available via the Federal e-Rulemaking Portal, at www.regulations.gov (search for Docket ID NOAA-NMFS-2014-0081). Those documents, and the small entity compliance guide prepared for this final rule, are also available from NMFS at the following address: Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818. The initial regulatory flexibility analysis (IRFA) and final regulatory flexibility analysis (FRFA) prepared under the authority of the Regulatory Flexibility Act (RFA) are included in the proposed rule and this final rule, respectively.

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS PIRO, 808-725-5032.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 2014, NMFS published a proposed rule in the Federal Register (79 FR 43373) to revise regulations at 50 CFR part 300, subpart O, to implement a decision of the Commission. The proposed rule was open for public comment through August 25, 2014.

This final rule is issued under the authority of the WCPFC Implementation Act (16 U.S.C. 6901 et seq.), which authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention,

including the decisions of the Commission. The authority to promulgate regulations has been delegated to NMFS.

This final rule implements for U.S. fishing vessels some of the purse seine-related provisions of the Commission's Conservation and Management Measure (CMM) 2013-01, "Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean." The preamble to the proposed rule includes detailed background information, including on the Convention and the Commission, the provisions of CMM 2013-01 being implemented in this rule, and the bases for the proposed regulations, which is not repeated here.

New Requirements

This final rule revises the existing limit on the number of fishing days that may be used by U.S. purse seine vessels in 2014 in an area called the Effort Limit Area for Purse Seine (ELAPS). The ELAPS includes all areas of the high seas and U.S. EEZ within the Convention Area between the latitudes of 20° North and 20° South (but not the U.S. territorial sea). The limit is revised from 2,588 fishing days to 1,828 fishing days.

Once NMFS determines during 2014 that, based on available information, the limit is expected to be reached by a specific future date, NMFS will issue a notice in the Federal Register announcing the closure of the U.S. purse seine fishery in the ELAPS starting on that specific future date. Upon any closure, it will be prohibited to use a U.S. purse seine vessel to fish in the ELAPS through the end of the calendar year. NMFS will publish the notice at least seven calendar days before the effective date of the closure to provide fishermen advance notice of the closure.

Comments and Responses

NMFS received three sets of comments on the proposed rule and supporting documents. The comments are summarized below, followed by responses from NMFS.

Comment 1: I support this rule to reduce fishing days in order to conserve our fish stocks.

Response: NMFS acknowledges the comment.

Comment 2: I fail to see how the proposed rule would protect the stock with the Asian and Pacific Island countries continuing to add boats to their Pacific Ocean fleets while the United States plays into their hands and continues to strangle-hold our fleet. Soon, all fish sold in the U.S. market will be sourced from foreign vessels, which are less-than-ideal role models.

These areas are highly regulated, as U.S. boats must be U.S.-built and have a fisheries endorsement to fish in these areas; and that is less than one third of the U.S. fleet. My boat is U.S.-built but cannot fish in U.S. waters. But instead of our government helping me to gain access, it just adds more unnecessary regulations.

There are countries that continue to add boats and to fish on fish aggregating devices even during the closure while not living up to their responsibilities that are already in place.

I propose to postpone implementing the limit until a long-term solution is agreed and implemented by all in the Commission, as this is not a permanent solution. These areas are not in danger from U.S. boats. However, the U.S. boats are the eyes and ears, and have in the past found and reported illegal, unreported, and unregulated fishing in the U.S. EEZ. The U.S. boats do not receive any reimbursement for time or fuel for this reporting, but it is the right thing to do.

While areas continue to be closed off, we are only hurting the stocks as we are allowing the Pacific Island Parties to focus international fishing efforts into their exclusive economic zones for purely economic reasons, rather than focusing on efforts to truly conserve, by limiting vessels. Remember these are highly migratory species. I compare the focusing of effort to

sunlight: normally, it will not hurt you, but if you focus sunlight through a magnifying glass, it will burn; this is what is being done by driving effort into smaller areas.

Postpone this proposed rule, or better, cancel it, as these areas are already regulated by the United States. The problem can be addressed and solved on the international level rather than strangle-holding our fleet while others continue to add boats, skirt regulations, and worst of all, not even enforce what is already in place.

Support the U.S. fleet and the stock and push for vessel limits on all fleets, as the catch phrase “domestic fleet” is simply Asian boats that are flagged in the islands. Work with the U.S. fleet instead of against it; we are the highest regulated fleet in the world, and we are ahead of the curve, as we have already dropped our fishing efforts (numbers of boats) in the 1980s when the U.S. Tuna Treaty (Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America, also known as the South Pacific Tuna Treaty, or SPTT) was signed, well ahead of other fleets that are continuing to add effort.

Let’s be logical and work together and protect the stock and our food source.

Response: NMFS recognizes that if the United States imposes Commission-mandated requirements on its vessels, such as limits on fishing effort, and other members of the Commission do not do the same—despite being required to do so under the Convention—for their vessels, U.S. fishing vessels can be put at a competitive disadvantage relative to the fishing vessels of other members. If that disadvantage is severe enough, U.S. vessels could supply less product than they formerly did, resulting in shifts in the sources of fish sold in U.S. and other markets. NMFS also recognizes that if other Commission members fail to fully implement the decisions of the Commission, such as the provisions of CMM 2013-01, those decisions are less likely to achieve their fish stock conservation objectives. However, in order to satisfy the

obligations of the United States as a party to the Convention and member of the Commission, NMFS is required to implement the Commission-mandated fishing effort limits for U.S. purse seine vessels. Accordingly, the commenter's proposal to postpone or cancel implementation would not satisfy U.S. obligations under the Convention. NMFS is proceeding with implementation through this final rule. NMFS also notes that the United States, as a member of the Commission, is contributing to and has prioritized the development of the Commission's compliance monitoring scheme, with the aim of improving compliance with Commission decisions by all its members.

Comment 3: The American Tunaboat Association (ATA) is composed of the owners of all U.S.-flag purse seine vessels fishing in the western Pacific Ocean. There will be a direct and significant impact on the U.S. fleet should this proposed rule be finalized as written.

The proposed reduction in allowable fishing days in the ELAPS from 2,588 to 1,828 would be a substantial loss of fishing opportunities for U.S. vessels at a time of great uncertainty regarding fishing access under the SPTT. The ATA understands that there may be little flexibility in implementing the Commission measure establishing a fishing day limit on the high seas, but we note that there is flexibility for the U.S. EEZs. Therefore, in combining the two areas as the ELAPS, a level higher than 1,828 fishing days is justified.

The ELAPS limits are not based on science relative to the conservation of the tuna stocks. The science provider to the Commission has not recommended, as a conservation measure, limits on catches of tunas on the high seas, or in any particular economic zones. This is an important point, because that truth provides the United States with more flexibility in the manner in which it regulates the U.S. fleet. For example, the United States could establish a larger number for allowable catches in the U.S. EEZ based on using certain past high years as base years. Given the

variability in the availability of highly migratory stocks in different areas during different years, and the relevance of the fishing strategies that are employed in any given year, such an approach would not be unreasonable.

The ATA urges NMFS to develop such an alternative approach and provide for a larger ELAPS limit than 1,828 fishing days. We also believe that, if all fishing by purse seine vessels is prohibited in these remote island areas as a result of an expansion of the Pacific marine monuments, as is being contemplated by the Administration (an action strongly opposed by ATA), the consequent lost fishing opportunities should be compensated for by allowing more fishing on the same stocks elsewhere; that is, on the high seas. From a science or conservation point of view, there would be no detriment to the tuna stocks from such an approach.

Response: NMFS acknowledges that the proposed rule could have direct economic impacts on participants in the U.S. purse seine fleet in the western and central Pacific Ocean (WCPO). As described in the RIR and IRFA prepared for this action, the impacts could be minor or substantial, depending on such factors as the length of the closure of the ELAPS in the event the limit is reached, whether the EEZs of the FFA members remain available for fishing during such a closure, and oceanic conditions.

This rule implements certain provisions of CMM 2013-01, which directs coastal members like the United States to “establish effort limits, or equivalent catch limits for purse seine fisheries within their EEZs that reflect the geographical distributions of skipjack, yellowfin, and bigeye tunas, and are consistent with the objectives for those species” (excerpt from paragraph 23 of CMM 2013-01). CMM 2013-01 further requires, “Those coastal States that have already notified limits to the Commission shall restrict purse seine effort and/or catch within their EEZs in accordance with those limits” (excerpt from paragraph 23 of CMM 2013-01).

Because the United States has previously notified the Commission of its purse seine effort limits for the U.S. EEZ since the limits were first established in 2009 (in a final rule published August 4, 2009; 74 FR 38544), the United States is obligated to continue to apply the same limits for the U.S. EEZ. Thus, CMM 2013-01 does not change the applicable purse seine fishing effort limit for the U.S. EEZ, and for that reason NMFS does not agree that there is flexibility in the limit for the U.S. EEZ or that a limit for the ELAPS of more than 1,828 fishing days is justified in this rule to implement provisions of CMM 2013-01.

Finally, on September 25, 2014, President Obama issued Proclamation 9173 extending the boundaries of the Pacific Remote Islands Marine National Monument around Jarvis Island, Wake Island, and Johnston Atoll to the outer limit of the U.S. EEZ. Under the Proclamation, commercial fishing is prohibited in the expansion area. NMFS acknowledges that the prohibition of commercial fishing within the expansion area will limit the fishing grounds available to U.S. purse seine vessels; however, we note that the expansion area represents a small fraction of the U.S. purse seine fleet's typical fishing grounds in the WCPO.

Changes from the Proposed Rule

No changes from the proposed rule have been made in this final rule.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this final rule is consistent with the WCPFC Implementation Act and other applicable laws.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act (RFA)

A FRFA was prepared. The FRFA incorporates the IRFA prepared for the proposed rule. The analysis in the IRFA is not repeated here in its entirety.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble of the proposed rule and in the SUMMARY and SUPPLEMENTARY INFORMATION sections of this final rule, above. The analysis follows.

Significant Issues Raised by Public Comments in Response to the IRFA

NMFS did not receive any comments on the IRFA itself, but two sets of comments could pertain to small entities. See Comments 2 and 3 on the proposed rule, and NMFS' responses, above.

Description of Small Entities to Which the Rule Will Apply

Small entities include “small businesses,” “small organizations,” and “small governmental jurisdictions.” The Small Business Administration (SBA) has established size standards for all major industry sectors in the United States, including commercial finfish harvesters (NAICS code 114111). A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$20.5 million for all its affiliated operations worldwide.

This final rule will apply to owners and operators of U.S. purse seine vessels used for fishing in the Convention Area. The number of affected vessels is the number licensed under the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (South Pacific Tuna Treaty, or SPTT). The current number of licensed vessels is 40, the maximum number of licenses available under the SPTT

(excluding joint-venture licenses, of which there are five available under the SPTT, none of which have ever been applied for or issued).

Based on (limited) available financial information about the affected fishing vessels and the SBA's small entity size standards for commercial finfish harvesters, and using individual vessels as proxies for individual businesses, NMFS believes that all the affected fish harvesting businesses are small entities. As stated above, there are currently 40 purse seine vessels in the affected purse seine fishery. Neither gross receipts nor ex-vessel price information specific to the 40 vessels are available to NMFS. Average annual receipts for each of the 40 vessels during the last 3 years for which reasonably complete data are available (2010-2012) were estimated as follows: The vessel's reported retained catches of skipjack tuna, yellowfin tuna, and bigeye tuna in each year were each multiplied by an indicative Asia-Pacific regional cannery price for that species and year (developed by the Pacific Islands Forum Fisheries Agency and available at <https://www.ffa.int/node/425#attachments>); the products were summed across species for each year; and the sums were averaged across the 3 years. The estimated average annual receipts for each of the 40 vessels were less than the \$20.5 million threshold used to classify businesses as small entities under the SBA size standard for finfish harvesting businesses.

Recordkeeping, Reporting, and Other Compliance Requirements

The final rule will not establish any new reporting or recordkeeping requirements within the meaning of the Paperwork Reduction Act. The classes of small entities subject to the requirements and the types of professional skills necessary to fulfill each of the requirements are described in the IRFA.

Disproportionate Impacts

There would be no disproportionate economic impacts between small and large entities operating purse seine vessels as a result of this final rule. Furthermore, there would be no disproportionate economic impacts based on vessel size, gear, or homeport.

Steps Taken to Minimize the Significant Economic Impacts on Small Entities

In previous rulemakings to establish or revise U.S. purse seine fishing effort limits in the ELAPS in accordance with Commission decisions, NMFS considered a number of alternatives. The alternatives included different time scales for the limits (e.g., single-year versus multiple-year limits); whether separate limits or a combined limit would be established in the U.S. EEZ and high seas portions of the ELAPS; whether the limit(s) would be allocated to individual vessels; and different magnitudes of the limit(s).

The first category of alternatives, time scales, is not relevant here because the objective is to implement the required fishing effort limit for 2014 only.

The second category of alternatives—whether or not to break up the ELAPS limit into separate limits for the U.S. EEZ and the high seas portions of the ELAPS—would provide less operational flexibility for affected purse seine vessels, and thus be more constraining and costly than the proposed limit. It is rejected for that reason.

The third category of alternatives, allocating the limit among individual vessels, would likely alleviate any adverse impacts of a race-to-fish that might occur as a result of establishing the competitive fishing effort limits as in the proposed rule. As described in the IRFA, those potential impacts include lower prices for landed product, as well as risks to performance and safety stemming from fishing during sub-optimal times. Those impacts, however, are expected to be minor. Furthermore, developing the necessary allocation criteria and procedures would be a

substantial and lengthy process that probably could not be completed in time to implement this limit for 2014. For these reasons, this alternative is rejected.

Regarding the fourth category of alternatives (the magnitude of the limits), NMFS considered, for the 2013 rule that established the 2013 ELAPS limit and existing 2014 ELAPS limit, both smaller and larger limits for the ELAPS. Smaller limits, being more constraining and costly to affected fishing businesses, are not considered further here. With respect to larger limits, in the 2013 rule, NMFS considered an alternative that would be based in part on the fleet's greatest annual level of fishing effort in the U.S. EEZ (on an average per-vessel basis, then expanded to a 40-vessel-equivalent) during the 1997-2010 time period. For this rule, NMFS considered an alternative using the same approach considered in the 2013 rule. Using that approach, the limit in the U.S. EEZ would be 1,655 fishing days, and when combined with the high seas limit of 1,270 fishing days, the total ELAPS limit would be 2,925 fishing days. Because this alternative limit is greater and thus less constraining than a limit of 1,828 fishing days (as well as the existing limit of 2,588 fishing days), the costs of complying with this alternative would be less than or equal to those of the proposed limit of 1,828 fishing days. This alternative is rejected because it would depart from the way that the effort limits established for the period 2009-2013 were determined. The approach used in formulating the limit in this final rule is the same as that used to establish ELAPS limits in the 2009 rule, the 2011 rule, and the 2013 rule, and affected entities have been exposed to the impacts of those limits for the past 5 years. Furthermore, as explained in NMFS' response to Comment 3, above, CMM 2013-01 does not all allow for higher purse seine effort limits in the U.S. EEZ than those already notified to the Commission.

The alternative of taking no action at all, which would leave the existing 2014 ELAPS limit of 2,588 fishing days in place, is rejected because it would fail to accomplish the objective of the WCPFC Implementation Act or satisfy the obligations of the United States as a Contracting Party to the Convention.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide has been prepared. The guide will be sent to permit and license holders in the affected fisheries. The guide and this final rule will also be available at www.fpir.noaa.gov and by request from NMFS PIRO (see ADDRESSES).

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: November 6, 2014

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 et seq.

2. In § 300.223, paragraph (a)(1) is revised to read as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(a) * * *

(1) For calendar year 2014 there is a limit of 1,828 fishing days.

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[FR Doc. 2014-26830 Filed 11/12/2014 at 8:45 am; Publication Date: 11/13/2014]